

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	NO.: 1:01-CR-336-01
v.	:	
	:	JUDGE RAMBO
TYRONE SMITH, a/k/a “Manny”	:	

**STATEMENT OF ISSUES
AT RE-SENTENCING PROCEEDING**

AND NOW comes the Defendant, Tyrone Smith, by his court-appointed counsel, Dennis E. Boyle, Esquire, and sets forth the following issues to be presented at his re-sentencing proceeding:

1. Whether *ex post facto* consideration of the Due Process Clause of the U.S. Constitution prevent the Court from enhancing Smith’s sentence for drug weights, for a leadership role in the offense and for obstruction of justice where these factors were neither found by a jury nor admitted by Mr. Smith?

(Suggested Answer in the Affirmative).

2. Whether the Supreme Court's redrafting or reformulation of the United States Sentencing Guidelines resulted in an implied legislative change to the guidelines which prevent the Court from improving the changes retroactively upon Mr. Smith?

(Suggested Answer in the Affirmative).

3. Whether the sentencing purposes of 18 U.S.C. §3553(a)(2), *i.e.*, retribution, deterances, incapacitation and rehabilitation, suggest that Mr. Smith should be given a sentence below the advisory guideline range?

(Suggested Answer in the Affirmative).

/s/ Dennis E. Boyle

Dennis E. Boyle, Esquire

Supreme Court I.D. No. 49618

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Counsel For: Tyrone Smith

Dated: July 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I electronically filed the foregoing with the Court using the CM/ECF system, which sent notification of such filing to the following person(s) at the following email address(es):

William A. Behe, Esquire
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/s/ Penny A. Rogers
Penny A. Rogers, Paralegal

Dated: July 26, 2005